

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MICHAEL SAN AGUSTIN,
Plaintiff,

v.

A.K. SCRIBNER, Warden; A.
QUINONES, Institutional Gang
Investigator,
Defendants.

No. C 08-4660 PJH (PR)

**ORDER GRANTING
DEFENDANTS' MOTIONS FOR A
STAY OF DISCOVERY AND FOR
LEAVE TO FILE DOCUMENTS
UNDER SEAL; GRANTING
PLAINTIFF'S MOTION FOR AN
EXTENSION OF TIME AND
DENYING HIS MOTION FOR STAY**

This is a civil rights case filed pro se by a state prisoner. Defendants have filed a combined motion to dismiss and for summary judgment, which is not yet opposed.

Plaintiff has moved for an extension of time to oppose the dispositive motion and for a "stay" of a ruling on the motions to allow him to complete discovery. Defendants have moved for a stay of discovery and for permission to file an exhibit under seal.

Defendants' dispositive motion is based in part on a contention that plaintiff has failed to state a claim, and in part on a contention that they are entitled to qualified immunity. In a motion to dismiss these are issues that are decided by treating the factual allegations of the complaint as true, so discovery is unnecessary. The court will grant the stay of discovery and first rule on the motion to dismiss. If it is denied and the motion for summary judgment is not moot, plaintiff may move to lift the stay of discovery. The motion for a stay of discovery (document number 20 on the docket) is **GRANTED**. See *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) (court should resolve qualified immunity issue before allowing discovery).

1 Plaintiff's motion to withhold ruling on the dispositive motion pending completion of
2 discovery (document number 19) is **DENIED**. No further discovery is permitted pending
3 further order of the court.

4 Defendants' motion to file confidential exhibits A, B, and C under seal (document
5 number 12) is **GRANTED**. The confidentiality of the documents filed under seal shall be
6 maintained by the court, and they shall remain under seal for seventy-five years before
7 public release.

8 Plaintiff's motion (document 18) for an extension of time to oppose defendants'
9 dispositive motion is **GRANTED**. The deadline to oppose the motion is **EXTENDED** to a
10 date thirty days from the date this order is entered. In view of narrowed issues here – the
11 motion to dismiss will be considered first, and the motion for summary judgment will be
12 ruled upon only if it is denied as moot – no further extensions will be granted. Defendants'
13 reply, if any, is due fifteen days from the date the opposition is filed, and no extensions of
14 that deadline will be granted.

15 **IT IS SO ORDERED.**

16 Dated: January 29, 2010



PHYLLIS J. HAMILTON
United States District Judge